

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of	:	CFTC Docket No. 00-08
	:	
STEVEN C. BRENNER and	:	ORDER PURSUANT TO
JAMI WEISNER BRENNER	:	DELEGATED AUTHORITY
_____	:	

On June 1, 2001, the Commission's Office of Proceedings received respondents' motion to dismiss the Division of Enforcement's ("Division") notice of appeal as untimely. Respondents also requested that the Commission: (1) strike the Division's appeal brief and designation of contents of appendix, and (2) stay the briefing schedule pending consideration of their motions.¹ The Division filed its response on the same day and argued that no relief should be granted because its notice of appeal was timely filed.

Resolving the parties' dispute about the timeliness of the Division's appeal requires consideration of an Administrative Law Judge's ("ALJ") jurisdiction to issue orders designed to clarify an initial decision and the effect such an order has on the filing deadlines established by Commission Rule 10.102. These issues are sufficiently important that the Commission should resolve them in the first instance. Even if respondents' motion is granted, however, the Commission must consider the issues raised in respondents' appeal brief. Given these circumstances, the Commission can consider the procedural issues raised by respondents most efficiently in the context of the other arguments raised in the parties' briefs.

¹ Respondents requested the stay in their response to the Division's opposition to their motion for an extension of time. Counsel for respondents should note that the Commission's Rules of Practice do not contemplate the submission of such responses in the context of motions.

Accordingly, respondents' requests to strike the Division's appeal brief and designation of contents of appendix, and for a stay of the briefing schedule are denied. Their motion to dismiss the Division's appeal is referred to the Commission pursuant to Commission Rule 10.109(b).

IT IS SO ORDERED.²

Edson G. Case
Deputy General Counsel
Commodity Futures Trading Commission

Dated: June 5, 2001

² By the Commission pursuant to delegated authority. 17 C.F.R. § 10.109(a)(1), (5).